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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Vernon W., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

SAMANTHA W.,

Defendant and Appellant.

D053474

(Super. Ct. No. EJ2960)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis,  
Judge. Affirmed.

Samantha W. appeals orders declaring her minor son, Vernon W., a dependent of  
the juvenile court under Welfare and Institutions Code section 300, subdivision (a)<sup>1</sup> and  
removing him from her custody under section 361, subdivision (c)(1). Samantha

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

challenges the sufficiency of the evidence to support the courts dispositional findings. She also argues the court abused its discretion by denying her request for unsupervised visits with Vernon. We affirm the orders.

## FACTUAL AND PROCEDURAL BACKGROUND

In April 2008 the San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court under section 300, subdivision (a) on behalf of one-year-old Vernon. The petition alleged Samantha and John, Vernon's father, exposed Vernon to at least two incidents of domestic violence thereby placing Vernon at risk of suffering serious physical injury nonaccidentally as a result of the violence.

According to detention and police reports documenting the incidents, John punched Samantha with his fist and struck her right eye while Samantha drove the family car. Vernon was seated in the backseat of the car. About two months later, John punched Samantha in the back of her head between three to five times while Samantha held Vernon in her arms. John tried to pull Vernon away from Samantha and told her that he was going to have a "tug-of-war" with Vernon.

Samantha admitted to social workers that John had been violent towards her in the past. The Agency noted Vernon was about one year old and would not be able to protect himself from the emotional abuse and violence. The Agency offered Samantha a voluntary case plan that consisted of referrals for domestic violence programs, individual therapy and anger management courses. Samantha agreed she would secure a permanent restraining order against John and signed the voluntary case plan.

At the time the Agency submitted its detention report, Samantha had not participated in services to address issues surrounding domestic violence or filed a permanent restraining order against John. Samantha instead isolated herself from other family members and did not disclose her whereabouts to the social worker. The social worker attempted to meet with Samantha on several occasions, but Samantha either did not attend or cancelled her scheduled appointments.

The court held a detention hearing, made a true finding on the petition and detained Vernon in out-of-home care. The court ordered Samantha to participate in her case plan and further ordered she receive supervised visitation with Vernon.

In the jurisdiction report, the Agency recommended Samantha receive reunification services and Vernon remain in a licensed foster home. Samantha acknowledged the domestic violence and stated John was the physical aggressor. She admitted she had been verbally abusive towards John. Samantha initially filed a restraining order against John but later withdrew the order because she believed John would not harm her or Vernon. Samantha admitted Vernon had been present during the physical altercations and that she and John had trouble controlling their anger. Samantha started participating in therapy sessions about three months before. However, she told the social worker she did not believe she needed anger management services because her anger was not directed towards Vernon or John.

The social worker believed Samantha did not yet have the ability to protect Vernon from future domestic violence for several reasons. Samantha signed a voluntary agreement with the Agency in February 2008, before the Agency filed the petition.

However, Samantha did not follow her case plan by enrolling in services or obtaining a restraining order. In addition, she allowed unsupervised contact between Vernon and John against court orders. Following the detention hearing, Samantha started to make some progress with services. As a result, the social worker recommended the court continue Vernon's placement in foster care and provide Samantha with additional services.

The court held a jurisdiction hearing in May 2008. The court found by clear and convincing evidence that the allegations in the petitions were true and took jurisdiction under section 300, subdivision (a). The court scheduled a disposition hearing.

At the contested disposition hearing, the court heard testimony from social worker Angela Petty and Samantha. Petty acknowledged that Samantha had been attending therapy and domestic violence classes. Petty, however, did not believe Vernon should be placed with Samantha at this time. Petty believed Samantha needed to continue with individual therapy; she had concerns regarding Samantha's delay in securing a restraining order against John.

Samantha testified she remained in counseling and met with her therapist on a weekly basis. She initially started therapy to address her depression and was now addressing domestic violence and creating a safety plan in order to regain custody of Vernon. Samantha stated she was enrolled in a 30-week domestic violence course and had attended six or seven sessions.

Samantha admitted John abused her in October 2007 and gave her a black eye. After the abuse, she went to a safe house for a few days but returned to be with John in

order to work on their marriage in November 2007. She did not believe the second incident of domestic violence that occurred in December 2007 was as severe as the first altercation because she did not suffer a black eye, and she did not have any marks on her body as a result of the fight. She claimed John hit her once on the back of her head and denied previously stating he had punched her head three to five times.

Following the second act of violence, Samantha moved in with her mother and then resumed contact with John in February 2008. She moved back to her house in April 2008 because John no longer lived there. She admitted she saw John that month at her house but claimed that was the only time John visited her.

After considering the testimony presented at the contested hearing and the evidence presented in the Agency's jurisdiction and disposition reports, the court declared Vernon a dependent and removed him from Samantha's care. The court also noted the Agency made reasonable efforts to prevent or eliminate the need for removal and ordered Samantha to comply with her case plan.

## DISCUSSION

### I

#### *Substantial Evidence Supports the Court's Dispositional Findings*

Samantha contends the evidence did not support the court's dispositional order removing the minor from her custody. Samantha first argues the facts do not warrant removing Vernon from her custody because the order was based on domestic violence, and Vernon did not suffer any harm during these incidents. Samantha also argues

Vernon's removal was unnecessary because there were less drastic alternatives than removal available to the court.

A

*Standard of Review*

In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in a light favorable to the juvenile court's order and affirm the order even if there is other evidence supporting a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) When the trial court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Before the court may order a child physically removed from his or her parent, it must find by clear and convincing evidence that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) The jurisdictional findings are prima facie evidence that the child cannot

safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 536, citing *In re B. G.* (1974) 11 Cal.3d 679, 699.) In this regard, the court may consider the parent's past conduct as well as present circumstances. (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.)

## B

### *Vernon Remained at Risk in Samantha's Care*

The court's removal order was based on findings that Vernon was at substantial risk of suffering nonaccidental injury if returned to Samantha's custody. The record shows a history of domestic violence. The Agency referrals reported at least two instances of domestic violence between John and Samantha. Both altercations occurred in the presence of Vernon. During the first incident, John punched Samantha while she was driving, and Samantha could have lost control of the car with Vernon in the backseat. During the second act of violence, John repeatedly punched Samantha in the head while she held Vernon in her arms. John also struggled to pull Vernon away from Samantha. Samantha argues Vernon was not at risk because he was not physically injured. However, given Vernon's young age and close proximity to the violence, he would not be in a position to protect himself from injury. Further, even though Vernon did not suffer physical harm, the domestic violence alone still impacts children "because they see and

hear the violence and the screaming." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 192; see also *In re Jon N.* (1986) 179 Cal.App.3d 156, 161.)

In addition to incidents alleged in the petitions, Samantha admitted she fought with John on other occasions. She also admitted they both had anger management problems. Samantha initially did not obtain a restraining order and even after she signed the voluntary case plan, Samantha allowed John back into the home and to have unsupervised contact with Vernon up until a few months before the disposition hearing. Samantha started participating in services by the disposition hearing, but she had yet to complete a domestic violence course and was still addressing domestic violence in therapy. Further, Samantha's testimony minimized the severity of violence committed against her. Samantha claimed the second act of violence was not as severe as the first even though John punched her several times and attempted to grab Vernon out of her arms. The court could reasonably infer from the testimony that Samantha had yet to grasp the seriousness of the abuse and the risk it could pose to Vernon. Also, the social worker opined that without additional services, Samantha's ability to protect Vernon remained in question. The court was entitled to find the social worker's opinion credible and give great weight to the assessment. (*In re Casey D.*, *supra*, 70 Cal.App.4th at pp. 52-53.) Under these circumstances, the court is entitled to intervene before Vernon is physically harmed. (See *In re Heather A.*, *supra*, 52 Cal.App.4th at pp. 194-196.) On this evidence, the court could properly find there was a substantial risk of harm to Vernon warranting his removal from Samantha's custody.



## C

### *The Court Did Not Err by Electing Not to Order Less Restrictive Alternatives*

Samantha also challenges the dispositional order because the court did not consider alternatives less drastic than removal. She asserts the court should have allowed Vernon to remain in her custody under strict supervision by social workers and warnings.

Before the court removes a child from parental custody, it must find there are no reasonable means by which the child's physical health can be protected without removal. (§ 361, subd. (c)(1).) Although the court is required to consider alternatives to removal, it has broad discretion in making a dispositional order. (*Ibid.*)

Samantha's argument fails because substantial evidence shows that the Agency made reasonable efforts to prevent the need for Vernon's removal, but that such measures were not sufficient in the end to protect Vernon. The Agency offered Samantha services, but she did not make substantive progress with these services. Samantha admitted to having anger management problems and indicated she wanted to participate in anger management counseling. However, at the time of the disposition hearing, Samantha had only completed six or seven sessions in a 30-week domestic violence course, and she had not completed an anger management program. In addition, Samantha allowed John to have unsupervised contact with Vernon after she signed the voluntary case plan and before John had made any substantive progress with his services. Further, even after several months of therapy, Samantha minimized the seriousness of the violence at the disposition hearing. Social worker Petty received a letter from Samantha's therapist and, based on that letter, Petty opined there were underlying issues regarding domestic

violence that needed to be addressed. Until then, Petty did not believe Vernon would be safe in Samantha's care. Based on these facts, placing Vernon in her care under the supervision of social workers was not a viable option. Under these circumstances, the evidence supports the juvenile court's finding that no reasonable means to protect Vernon was available without removing him from Samantha's custody. (See *In re B. G.*, *supra*, 11 Cal.3d at pp. 698-699.)

## II

### *The Court Did Not Abuse Its Discretion by Denying Unsupervised Visits*

Samantha argues the court abused its discretion by denying her request for unsupervised visits with Vernon. She asserts she was making progress with the components of her reunification plan, and she would not have contact with John.

## A

### *Standard of Review*

The juvenile court defines a parent's visitation rights by balancing the parent's interests in visitation with the child's best interests. (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) The court may impose restrictions on parental visitation, consistent with the child's best interests, based on the particular circumstances of the case. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1009.) The state's interest in assuring the best interests of the child justifies any limited intrusion on a parent's right to visitation. (*In re Melissa H.* (1974) 38 Cal.App.3d 173, 175.)

The court has broad discretion in making visitation orders which we review for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Jasmine D.*

(2000) 78 Cal.App.4th 1339, 1351-1352.) In this regard, the juvenile court's order will not be disturbed on appeal unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment for that of the trial court. (*In re Stephanie M.*, at pp. 318-319; *In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227.)

## B

### *Vernon's Best Interests Are Ensured with Supervised Visits*

In determining there was some risk to Vernon if visits with Samantha were unsupervised, the court was entitled to consider evidence that Samantha had not made enough progress in domestic violence treatment to protect Vernon. Further, Samantha continued to minimize the violence between her and John. She testified at the disposition hearing that the second act of violence reported in the petition "wasn't as bad" as the first incident because she didn't suffer any visible signs of injury, like the black eye she sustained after the first incident. She also testified John only hit her once during the second incident and denied that he hit her three to five times on the back of her head as she initially reported. In the social worker's opinion, Samantha was not yet able to protect Vernon because Samantha had not addressed all the issues surrounding the domestic violence through therapy or classes. The social worker recommended visits with Vernon remain supervised until Samantha made additional progress in therapy. The order for supervised visitation was in Vernon's best interests and well within the court's broad discretion.

DISPOSITION

The orders are affirmed.

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IRION, J.

WE CONCUR:

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BENKE, Acting P. J.

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McDONALD, J.